



## Guide to setting up in Australia

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## 1. Statutory Obligations

When establishing your business in Australia you need to be aware of the obligatory laws and regulations that are present. Also be aware of the rights and obligations the business has to its employees.



### Australian Companies

You can set up a subsidiary of the parent company or a foreign branch, which need to be registered with the Australian Securities and Investment Commission (ASIC). Documents need to be filled in, certain documents to be attached and a lodgment fee will be necessary.

### Business Names

A business name is the name under which a business operates and registration identifies the owners of that business. If your business name is different from your company name registration is compulsory; registration must be completed in every state and territory from which a business operates, and must be completed before the business starts trading

### Australian Taxation

In Australia taxes are applied at both the Federal and State level and the Australian Taxation Office (ATO) administers Federal taxes that apply to all Australian States. In New South Wales the Office of State Revenue (OSR) administers State taxes. The following information covers general taxation.

### Federal Taxes

Your business will need to apply for a tax file number **TFN** and for the Australian Business Number (ABN). The **ABN** is the identifying number that businesses use when dealing with other businesses – for example, you generally need to quote an **ABN** on your invoices or other documents relating to sales that you make to other enterprises to avoid having tax withheld from payments to you. You use your **ABN** in certain dealings with the Tax Office and other areas of government. If you're registered for GST, you also need to put an **ABN** on your tax invoices and adjustment notes.

The Federal Government levies a range of taxes. Taxes affecting small businesses include Goods and Services Tax (GST) and Income Tax.

## Goods and Services Tax (GST)

GST is a transaction-based tax imposed on the consumption of goods and services. GST is levied on the sale of most goods, services and other business activities at the rate of 10%. GST is levied at all stages of production, from manufacturing to distribution to retail.

Businesses must register for GST to be entitled to charge GST and claim input tax credits. Businesses with an annual turnover exceeding \$50,000 must register for GST. Businesses that do not exceed the registration threshold may voluntarily register for GST.

While every registered business will charge GST, the final consumer ultimately bears the burden of the consumption tax. This occurs by the operation of an input tax credit system. A registered business will charge GST on its sales, however, any GST paid for purchases of the business will be credited back to the business. The business will, therefore, only pay the difference between the GST collected from sales and the GST paid on purchases.

Registered businesses are required to lodge a Business Activity Statement, either monthly or quarterly to report the amount of GST collected on sales as well as to claim their input tax credits. The difference between these two amounts is either payable by or refunded to the business.

## Income Tax

As an individual sole trader, partner or company you are required to register for an income tax file number.

Individual sole traders do not need a separate tax file number and should use their individual tax file number. On the other hand, companies and partnerships need to register a separate tax file number.

A partnership needs its own tax file number for lodging its annual income tax return, though tax is levied on the partners and not the partnership.

## Pay As You Go (PAYG) Tax

The PAYG system applies to the process of paying tax on the business' income and in deducting employees' income tax obligations from their pay.

Under tax law a person carrying on a business must keep records that record and explain all transactions.

You are obliged to make PAYG installment payments for your business during the year as installments for your business' end of year income tax liability.

The amount of installment varies from business to business and is often dependent on your previous year's income. Installments may be made on a monthly, quarterly or annual basis. Certain conditions apply for electing a quarterly or annual basis for payment.

Businesses employing people also need to account for PAYG withholding payments. This is similar to the previous PAYE system for withholding taxes from employees' wages and salaries as a credit for the employees' income tax liability. You must register for PAYG withholding to receive a Withholding Payer Number.

PAYG installments and withholding are reported and paid by completing your Business Activity Statement (BAS), if you are registered for GST, otherwise on your Installment Activity Statement (IAS)

## Generally, every business needs to:

have an Australian Business Number (ABN);  
account for employees' income tax;  
withhold from payments to other businesses that don't quote their ABN;  
account for business expenses it claims as deductions; and  
keep business records and report and pay tax.  
Submit a Business Activity Statement

## Superannuation Guarantee

The superannuation guarantee affects all employers and most employees. As an employer you must provide sufficient superannuation support for your eligible employees.

Most employees, whether full-time, part-time or casual, are covered by the superannuation guarantee legislation which as at June, 2003 is 9% of employees salary or wage. Employers do not have to provide superannuation support for certain categories of employees, including:

employees paid less than \$450 in any calendar month – superannuation does not have to be provided for that month.

Employees aged 70 years and over (From 1 July 2002, working people aged 70 and over but less than 75, who are working at least 10 hours per week, are able to continue to make their own contributions to superannuation. However, employers will still be exempt from having to provide superannuation support for employees aged 70 years and over.)

Non-resident employees who are paid solely for work undertaken outside Australia

resident employees paid by non-resident employers for work done outside Australia.

Employees under 18 years of age and working 30 hours or less per week .

Employees paid to do work of a domestic or private nature for not more than 30 hours per week (e.g. a part-time nanny or housekeeper)

employees who receive payments under the Community Development Employment Program (CDEP), and

employees that elect not to receive superannuation guarantee support because their accumulated superannuation benefits already exceed the pension Reasonable Benefit Limit.

## Fringe Benefit Tax

A fringe benefit is a benefit provided to an employee (or their associate) because that person is employed by the company. Benefits can be provided by an employer, an associate of the employer, or by a third party under an arrangement with the employer. An employee can be a current, future or former employee.

Fringe benefits include rights, privileges or services. For example, you provide a fringe benefit when you:

- allow an employee to use a work car for private purposes
- give an employee a cheap loan, or
- pay an employee's private health insurance costs.

Some benefits such as laptop computers (one per employee each FBT year) and mobile phones that are primarily used for work are exempt from FBT.

As an employer, you have to pay FBT, even if the benefit is provided by an associate or by a third party under an arrangement with you. For example, you may deal with a supplier who, in turn, provides free goods to your employees.

There are particular concessions for employees living away from home, such as relocation, accommodation and food that may apply.

## State Taxes

Each of the states and territories of Australia imposes taxes such as stamp duty, payroll tax and land tax.

In New South Wales payroll tax is levied on wages (and other employment-related payments) paid by an employer or a group of related businesses for services performed wholly within the State.

## 2. Employment

Australia has a complicated structure of laws regulating employment. The basic principles of Common Law are modified by both Federal and State legislation. While the States regulate most aspects of employment law, the Federal Government has power to legislate in relation to industrial disputes extending beyond the limits of any one State.



A system of industrial awards has been established which dictates the minimum terms and conditions of employment for most workers.

### **Basic Employee Benefits & Conditions**

The standard working week is 35 – 40 hours, generally Monday to Friday. Employees usually receive four weeks' annual leave.

**Sick Leave** There is usually an entitlement to paid sick leave of at least five working days a year.

**Annual Leave** usually accrues at a rate of 20 days per year which accumulates and any unused leave is paid out on termination.

### **Compulsory Superannuation**

Under Federal Legislation, employers are required to make certain minimum superannuation contributions on behalf of their employees. The minimum contribution rate as at 1<sup>st</sup> July, 2002 is 9% of the employee's salary or wages.

### **Workers Compensation**

Employees are also entitled to workers' compensation ( the insurance for which is compulsory for employers) for any injuries suffered during employment.

### **Long Service Leave**

Employees are entitled to Long Service Leave. The most common requirements are three months leave after 10 years continuous service with one employer. In some states the continuous service is 15 years.

### **Occupational Health & Safety**

Legislation in each State & Territory specifies responsibilities for employers to ensure the health, safety and welfare at work of employees, independent contractors and members of the public.

### 3. Intellectual Property Rights

In Australia legislation provides protection for Intellectual property principally for trade marks, copyright, patents and industrial designs.

**IP Australia** grants patents, registers designs and trade marks.

**IP Australia** receive and process applications, conduct hearings and decide on disputed matters relating to the granting or denial of Australian IP rights. IP Australia maintain the Registers of Patents, Designs, Trade Marks.

Australia is a member of the Patent Cooperation Treaty (PCT). This allows you to make a patent application designating the member countries of the Treaty within which you intend to seek patents. **IP Australia** receive PCT applications and carry out international searches and international preliminary examinations for customers who use the PCT to seek patents.

#### *Types of Intellectual Property:*

**Patents** for new or improved products or processes;

**Trade marks** for words, symbols, pictures, sounds, smells or a combination of these, to distinguish the goods and services of one trader from those of another;

**Design** for the shape or appearance of manufactured goods;

**Copyright** for original material in literary, artistic, dramatic or musical works, films, broadcasts, multimedia and computer programs;

**Circuit layout rights** for the 3-dimensional configuration of electronic circuits in integrated circuit products or layout designs;

**Plant breeders rights** for new plant varieties; and

**Trade Secrets and confidentiality** including know-how and other confidential or proprietary information.

With the exception of copyright and circuit layout rights, which are automatic, you must take formal steps to register your IP and obtain the legal rights of ownership otherwise, you will have to rely on common law to prove ownership and prior use for non-registered IP.

Note: Registering your IP rights in Australia does not give you international protection You must apply for this separately.

## 4. Domain Names

Registering a domain name is an important factor in developing an online presence – it represents your unique electronic address on the internet where your website is located.

If you intend to trade online, registering a domain name should be an early step in implementing your business plan, along with registering your company and business names.

There are two main types of domain names:

Domain names that end in .com, .net, .biz etc are available for use by anyone around the world and referred to as global domain names.

Domain names that end with country extension eg com.au, net.au, org.au

The Australian domain names are administered by .au Domain Administration Ltd (auDA). For global domain names they are administered by ICANN.

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